

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff/Defendant,  
  
vs.  
  
LASHAWN JERMAINE JOHNSON,  
  
Defendant/Plaintiff.

CR 06-79-BLG-DLC

ORDER

**FILED**

JUN 03 2015

Clerk, U.S. District Court  
District Of Montana  
Missoula

Defendant/Plaintiff LaShawn Jermaine Johnson has filed a motion for return of property under Federal Rule of Criminal Procedure 41(g). Following a jury trial, Johnson was convicted of five drug related charges on November 29, 2006. In addition, based on the evidence presented at trial and pursuant to 21 U.S.C. § 853, the Court ordered the forfeiture of one 1963 Chevrolet Impala, VIN 31867L186574. As part of the judgment of conviction, Johnson was ordered to pay a \$500.00 special assessment. The Court entered a final order of forfeiture of the Chevrolet Impala on November 28, 2007.

Johnson subsequently filed a petition for writ of habeas corpus under 28 U.S.C. § 2255, arguing, *inter alia*, that his convictions should be set aside due to *Brady/Giglio* violations. The government conceded that *Brady/Giglio* violations

had occurred and Johnson's sentence was vacated on February 12, 2015. Johnson now seeks the return of the \$500.00 special assessment and the Chevrolet Impala or the funds obtained through its sale. The Court grants the motion for the return of the \$500.00 special assessment and orders the government to file an answer to the motion with respect to the Chevrolet Impala.

A motion filed under Fed. R. Crim. P. 41(g) after criminal proceedings have concluded invokes the district court's equitable jurisdiction. Procedurally, it is treated as if it is a civil complaint. *United States v. Ibrahim*, 522 F.3d 1003, 1007 (9th Cir. 2008); *United States v. Ritchie*, 342 F.3d 903, 906-07 (9th Cir. 2003); *United States v. Marolf*, 173 F.3d 1213, 1216 (9th Cir. 1999); *United States v. Martinson*, 809 F.2d 1364, 1366-67 (9th Cir. 1987). The United States must file an Answer with respect to the motion for return of the Chevrolet Impala.

IT IS ORDERED that:

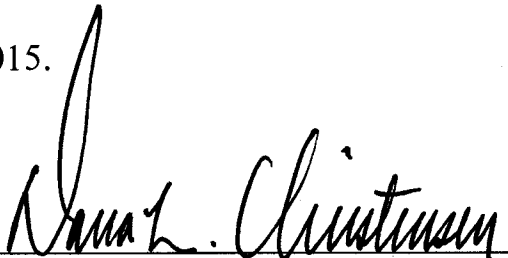
1. The Clerk of Court shall return to Johnson the \$500.00 special assessment. *United States v. Hayes*, 385 F.3d 1226, 1229 (9th Cir. 2004).
2. With respect to the Chevrolet Impala, the United States must file and conventionally serve on Johnson an Answer or a motion for summary judgment within 21 days of the filing date of this Order. If a summary judgment motion is filed, the United States must comply with *Rand v. Rowland*, 154 F.3d 952 (9th Cir.

1998) (en banc), and D. Mont. L.R. 56.2.

3. If the United States files a motion for summary judgment, Johnson may respond to the motion within twenty-one days of its filing. The United States may file a reply within 14 days of the filing of Johnson's response.

3. The Clerk of Court has opened a civil file for administrative purposes only. The parties may not file in the civil case.

DATED this 3<sup>rd</sup> day of June 2015.

  
Dana L. Christensen, Chief Judge  
United States District Court